

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of
RCA Global Communications Inc.

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or for Refund
of Corporation Tax under Article 9, Section 183 of
the Tax Law for the Years 1970 through 1972, and
under Article 9, Section 184 of the Tax Law for
the Periods Ended June 30, 1969, September 30,
1969, December 31, 1969, June 30, 1970 and
March 31, 1971 through September 30, 1972.

State of New York
County of Albany

Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 13th day of November, 1981, he served the within notice of Decision by certified mail upon RCA Global Communications Inc., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

RCA Global Communications Inc.
60 Broad St.
New York, NY 10004

and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the petitioner herein and that the address set forth on said wrapper is the last known address of the petitioner.

Sworn to before me this
13th day of November, 1981.

Cornelia A. Haglund

J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
RCA Global Communications Inc. :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or for Refund :
of Corporation Tax under Article 9, Section 183 of :
the Tax Law for the Years 1970 through 1972, and :
under Article 9, Section 184 of the Tax Law for :
the Periods Ended June 30, 1969, September 30, :
1969, December 31, 1969, June 30, 1970 and :
March 31, 1971 through September 30, 1972. :

State of New York
County of Albany

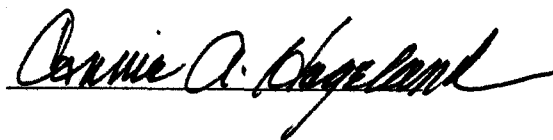
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 13th day of November, 1981, he served the within notice of Decision by certified mail upon H. Richard Schumacher the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

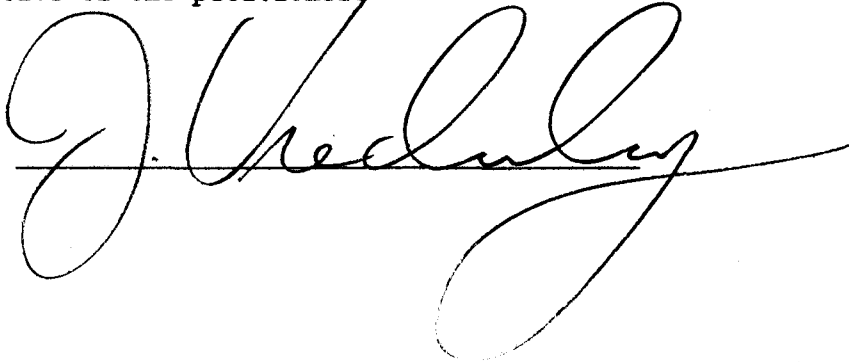
H. Richard Schumacher
Cahill, Gordon & Reindel
80 Pine St.
New York, NY 10005

and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the representative of the petitioner herein and that the address set forth on said wrapper is the last known address of the representative of the petitioner.

Sworn to before me this
13th day of November, 1981.





STATE OF NEW YORK
STATE TAX COMMISSION
ALBANY, NEW YORK 12227

November 13, 1981

RCA Global Communications Inc.
60 Broad St.
New York, NY 10004

Gentlemen:

Please take notice of the Decision of the State Tax Commission enclosed herewith.

You have now exhausted your right of review at the administrative level. Pursuant to section(s) 690 of the Tax Law, any proceeding in court to review an adverse decision by the State Tax Commission can only be instituted under Article 78 of the Civil Practice Laws and Rules, and must be commenced in the Supreme Court of the State of New York, Albany County, within 4 months from the date of this notice.

Inquiries concerning the computation of tax due or refund allowed in accordance with this decision may be addressed to:

NYS Dept. Taxation and Finance
Deputy Commissioner and Counsel
Albany, New York 12227
Phone # (518) 457-6240

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative
H. Richard Schumacher
Cahill, Gordon & Reindel
80 Pine St.
New York, NY 10005
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	
of	:	
	:	
RCA GLOBAL COMMUNICATIONS, INC.	:	DECISION
	:	
for Redetermination of a Deficiency or for	:	
Refund of Corporation Tax under Article 9,	:	
Section 183 of the Tax Law for the Years 1970	:	
through 1972, and under Article 9, Section 184	:	
of the Tax Law for the Periods Ended June 30,	:	
1969, September 30, 1969, December 31, 1969,	:	
June 30, 1970 and March 31, 1971 through	:	
September 30, 1972.	:	

Petitioner, RCA Global Communications, Inc., 60 Broad Street, New York, New York, filed a petition for redetermination of a deficiency or for a refund of corporation tax under Article 9, Section 183 of the Tax Law for the years 1970 through 1972, and under Article 9, Section 184 of the Tax Law for the periods ended June 30, 1969, September 30, 1969, December 31, 1969, June 30, 1970 and March 31, 1971 through September 30, 1972 (File No. 11685).

A formal hearing was held before Michael Alexander, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on May 17, 1977 at 1:15 P.M., and was continued to conclusion on January 18, 1978 at 1:15 P.M. Petitioner appeared by Cahill, Gordon & Reindel, Esqs. (H. Richard Schumacher, Esq., Lawrence H. Cohen, Esq. and Andrew L. Deutsch, Esq., of counsel). The Audit Division appeared by Peter Crotty, Esq. (Richard Kaufman, Esq. and Francis Cosgrove, Esq., of counsel).

ISSUES

I. Whether the notices of deficiency issued by the Audit Division, and petitioner's claims for credit or refund of corporation taxes paid, were timely.

II. Whether accounts receivable arising from petitioner's international telegraph business were properly included in the measure of assets employed by petitioner in business in New York for purposes of the tax imposed by section 183 of the Tax Law.

III. Whether notes evidencing loans by petitioner to its wholly-owned subsidiary, RCA Alaska Communications, Inc., were properly included as assets employed by petitioner in business in New York for purposes of section 183.

IV. Whether interest paid to petitioner by its subsidiary on the aforesaid notes constituted earnings from sources within the state for purposes of the additional franchise tax imposed by section 184 of the Tax Law.

FINDINGS OF FACT

1. On June 16, 1975, the Audit Division issued to petitioner, RCA Global Communications, Inc. ("RCA Globcom"), notices of deficiency asserting additional taxes due under section 183 of the Tax Law, scheduled as follows:

<u>PERIOD BEGUN</u>	<u>TAX</u>	<u>INTEREST</u>	<u>TOTAL</u>
1/1/70	\$13,205.45	\$4,191.41	\$17,396.86 ¹
1/1/71	16,920.70	4,355.39	21,276.09 ²
1/1/72	29,098.17	7,179.97	36,278.14

¹ Reduced, per the Statement of Audit Adjustment, to -0- by application of an overpayment by petitioner under section 184 for the period ended December 31, 1970, in the amount \$17,396.86.

² Reduced, as above, to \$8,530.46, by application of petitioner's overpayment under section 184 for the period ended December 31, 1970, in the amount \$12,745.63.

2. On June 16, 1975, the Audit Division issued to petitioner notices of deficiency asserting additional taxes due under section 184 of the Tax Law, scheduled as follows:

<u>PERIOD ENDED</u>	<u>TAX</u>	<u>INTEREST</u>	<u>TOTAL</u>	
6/30/69	\$ 67.83	\$ 23.75	\$ 91.58	1
9/30/69	12.21	4.09	16.30	2
12/31/69	41.28	13.21	54.49	2
6/30/70	359.64	104.33	463.97	2
3/31/71	1,156.72	283.51	1,440.23	2
6/30/71	1,858.51	427.64	2,286.15	2
9/30/71	2,520.66	542.19	3,062.85	2
12/31/71	1,671.94	334.56	2,006.50	2
3/31/72	3,426.00	792.95	4,218.95	2
6/30/72	4,342.50	923.58	5,265.73	2
9/30/72	3,593.45	696.95	4,290.40	2

¹ Reduced, per Statement of Audit Adjustment, to -0- by application of overpayments under section 184 for the periods ended March 31, 1970, September 30, 1970, and December 31, 1970.

² Reduced to -0- by application of an overpayment under section 184 for the period ended December 31, 1970.

3. On June 16, 1975, the Audit Division issued to petitioner statements of overpayment of taxes under section 184 in the following amounts:

<u>PERIOD ENDED</u>	<u>TAX CREDIT</u>	<u>INTEREST</u>	<u>TOTAL CREDIT</u>
3/31/70	\$ 7.55	\$ 2.30	\$ 9.85
9/30/70	31.08	8.55	39.63
12/31/70	42,290.42	10,999.74	53,290.16

4. On July 2, 1974, petitioner, by its executive vice-president for finance, executed a consent extending the period of limitation for assessment of tax under section 183 of the Tax Law for the years 1970 through 1972, and under section 184 for the quarterly periods ended June 30, 1969 through December 31, 1971, to and including March 31, 1975. Neither petitioner nor the Audit Division has produced any further agreement executed by the parties subsequent to the one which expired on March 31, 1975.

5. On or about November 3, 1975, petitioner filed Claims for Credit or Refund of Corporation Tax Paid, wherein it requested refund of overpayment of tax under section 184 for the quarters ended March 31, 1970, September 30, 1970 and December 31, 1970.

6. On or about November 3, 1975, petitioner filed petitions for redetermination of the deficiencies asserted under sections 183 and 184, which petitions were treated by the Audit Division as timely made.

7. Petitioner is incorporated in the State of Delaware, and has its executive headquarters and principal operations center at 60 Broad Street, New York, New York.

8. Petitioner is regulated and licensed by the Federal Communications Commission ("FCC") as an international record carrier ("IRC"). It is permitted to provide communications services between the continental United States and points overseas, but it cannot carry traffic between customers located in the continental United States (including Alaska) and Canada. Petitioner is authorized by the FCC to receive traffic from customers and to deliver traffic to customers only in "gateway cities", which were, during the audit period, New York City, San Francisco and Washington, D.C.

9. Petitioner's overseas circuitry is provided through submarine cables and through the International Telecommunications Satellite Organization ("INTELSAT") system of communications satellites. None of the cables depart from New York State. The INTELSAT system, which is owned and operated by a consortium created by treaty, has none of its earth stations in New York State. RCA Globcom generally maintains and operates its overseas circuits jointly with foreign carriers, which are responsible for distribution of traffic at the other "ends" of the circuits.

10. During the period herein at issue, petitioner's overseas services to and from the continental United States included telegrams, teleprinter exchange ("telex"), and leased channels for alternate voice-data use.

(a) Telegram service. Customers may file overseas telegrams with petitioner in the gateways, or anywhere in the United States with Western Union, the monopoly domestic carrier, which then forwards the telegrams to petitioner or to another IRC for transmission to the IRC's correspondents abroad. RCA Globcom and the other IRCs are authorized by the Federal Communications Commission to deliver telegrams in the gateways; telegrams addressed elsewhere are turned over to Western Union for delivery.

(b) Telex. A telex subscriber is supplied with a teleprinter and the capacity to contact other subscribers around the world. Petitioner has subscribers in the gateways who may communicate only with overseas points; in addition, petitioner's system interfaces with the two domestic telex systems to give the latters' subscribers overseas capability. Reciprocally, subscribers to most foreign telex services can "call" petitioner's subscribers or pass a call through petitioner's system into the domestic systems to reach the latters' subscribers.

(c) Leased channels. A customer may lease, for its exclusive use, a channel connecting two or more fixed points. Such private line typically involves three carriers: a domestic carrier, usually American Telephone and Telegraph, which is responsible for the inland haul in this country; RCA Globcom or another IRC, which extends the circuit abroad; and a foreign carrier which completes the transmission. Petitioner on occasion leases various end-line equipment for use with such circuits.

11. Petitioner provides two other services in addition to the abovedescribed overseas services:

(a) Radiomarine record service between the continental United States and ships at sea. In connection therewith, petitioner operated, during the period at issue, public coast telegraph stations, none of which was situated in New York State.

(b) Long-line telephone facilities in the central Pacific.

12. Tariffs, required to be filed by petitioner with the FCC, govern charges to customers for outgoing overseas traffic. Tariffs for overseas telegram and telex services must conform to the "country-to-country" rate structure, in accordance with long-standing FCC policy. (Under this policy, the charge for a given item of traffic to a given overseas point is the same from any point in the continental United States.) The sharing of revenues by petitioner with foreign and other carriers is governed by contracts, which must also be filed by petitioner with the FCC.

If a customer files an overseas telegram with Western Union which the latter forwards abroad through petitioner, Western Union collects the tariff charge from the customer, deducts a prescribed share for its domestic haul and remits the remainder to petitioner. If a customer files an overseas telegram directly with RCA Globcom in a gateway city, petitioner sends the message abroad and of course, does not share the toll with Western Union. In either situation, petitioner divides its receipts with the foreign carrier, which jointly operates the overseas circuit and delivers the message to the addressee.

With respect to outgoing telex calls sent abroad over petitioner's circuits, petitioner bills the customer at the prescribed country-to-country

rate. If Western Union has participated, it receives a share of the toll for its domestic haul. Petitioner's receipts are, again, subject to division with the participating foreign carrier.

The arrangements for incoming overseas telegrams and telex calls are essentially reciprocals of those for outgoing traffic.

In the case of leased channels, each of the three participants (the domestic carrier which provides the inland haul, petitioner and the foreign carrier) bills the customer separately at its tariffed rate for its share of the total facility.

Billing procedures for radiomarine messages are like those for overseas telegrams, except that messages coming in from ships are in effect "collect" calls. A ship likely to use the service for commercial purposes usually designates an agent to receive and pay such invoices.

13. Petitioner generally allocated its receivables on the basis of the customer's billing address. An exception was the "Broad Street Accounts Receivable" account, on which were recorded all telex calls and the many relatively small charges arising from customer use of petitioner's telecommunications credit card. Petitioner assigned all receivables in the Broad Street account to New York for purposes of the section 183 tax, due to the impracticability of attempting to allocate the large number of billings.

14. In 1969, petitioner established RCA Alaska Communications, Inc. ("RCA Alascom") as a wholly-owned subsidiary, the headquarters and operational management of which are located in Anchorage, Alaska. RCA Alascom was formed to purchase certain telecommunication facilities in the State of Alaska from the United States Government and then, as required by the purchase agreement,

to develop a telecommunication system for civilian use in Alaska. All of RCA Alascom's business and assets are located outside New York.

15. By the terms of the contract between petitioner and the Federal government, RCA Alascom was to have a 40/60 debt-to-equity financial structure. Petitioner's initial capital contribution was in the amount of \$35,000,000.00, which consisted of \$21,000,000.00 in stock (1,050,000 common shares at \$20 per share) and \$14,000,000.00 in notes, paying interest at the prevailing prime rate. Said stock certificates and notes were stored in a vault in New York City.

From time to time, RCA Alascom forwarded to petitioner its plans for further expansion of facilities and requested additional construction funds and working capital therefor. Upon approval by petitioner and on occasion petitioner's parent corporation, RCA Corporation, petitioner provided the necessary monies, in return for which petitioner received additional shares in the subsidiary and further interest-bearing notes.

CONCLUSIONS OF LAW

A. That section 1083(a) of the Tax Law requires that assessment of taxes under Article 9 be made within three years after the return was filed. The period of limitation may be extended by written agreement of the taxpayer and the Tax Commission. Section 1083(c)(2).

B. That the notices of deficiency asserting against petitioner additional taxes under section 183 for the years 1970 and 1971, and the notices of deficiency asserting additional taxes under section 184 for the periods ended June 30, 1969, September 30, 1969, December 31, 1969, June 30, 1970 and March 30, 1971 through December 31, 1971 were not issued within the period prescribed

by section 1083(a), taking into consideration the additional period agreed to by petitioner and the Tax Commission.

C. That petitioner's claims for refund of overpayments of tax under section 184 for the quarters ended March 31, 1970, September 30, 1970 and December 31, 1970 were not timely made. Where, as here, petitioner and the Tax Commission executed a consent extending the period of limitation for assessment of taxes under Article 9, section 1087(b) prescribes the period within which such claims for refund must be filed:

"[T]he period for filing a claim for credit or refund, or for making credit or refund if no claim is filed, shall not expire prior to six months after the expiration of the period within which an assessment may be made pursuant to the agreement or any extension thereof."

D. That section 183 of the Tax Law imposes an annual franchise tax upon domestic and foreign transmission corporations, which is computed on the basis of the amount of the corporation's capital stock within New York during the preceding year. The measure of the amount of capital stock in New York is prescribed by subdivision 2 of said section:

"The measure of the amount of capital stock in this state, except as hereinafter provided, shall be such a portion of the issued capital stock as the gross assets, exclusive of obligations issued by the United States and cash on hand and on deposit, employed in any business within this state, bear to the gross assets, exclusive of obligations issued by the United States and cash on hand and on deposit, wherever employed in business."

E. That the accounts receivable collectible in petitioner's operations center at New York City had a sufficient business nexus with this state to justify the categorization thereof as assets employed in petitioner's business in New York. Said accounts were managed and controlled from the New York office, which, as aforesaid, was the executive headquarters and principal operations center of petitioner's international telecommunications business. See Burke v. Wells, 184 N.Y. 275 (1906), aff'd, 208 U.S. 14 (1908), wherein it

was held that bills receivable of a foreign corporation maintaining an office in New York for sale of its products in original packages, were taxable as capital employed in this state, even though said bills were derived solely from interstate commerce; the bills were not in transitu to the corporation's home office in Dublin but were retained in New York until maturity in accordance with the corporation's regular and permanent course of business. See also David Williams Co. v. Sohmer, 151 A.D. 764 (3d Dept. 1912).

F. That the notes of RCA Alascom were properly deemed assets employed by petitioner in New York. For purposes of taxation, the situs of promissory notes and like instruments, where the debt is inseparable from the paper which declares it, is the place where they are physically held. Burke v. Wells, supra at 279. This indebtedness is managed and controlled from petitioner's principal office in Manhattan; for example, the subsidiary's plans for expansion of facilities and its requests for additional monies therefor were subject to approval by petitioner and on occasion, by RCA Corporation. While it is plain that RCA Alascom did no business in New York during the period at issue, this fact does not alter the situs of the notes. Cf. David Williams Co. v. Sohmer, supra.

G. That section 184.1 of the Tax Law imposes an additional franchise tax, in the nature of an excise tax or license fee, upon transmission corporations. The tax is computed as a percentage of the corporation's "gross earnings from all sources within this state, excluding earnings derived from business of an interstate character."

H. That the interest paid to petitioner by its subsidiary on notes, the situs of which was in New York, constituted earnings from a source within this state for purposes of section 184. Said interest did not fall within the

purview of the exclusion provided by subdivision 1 of said section, i.e., it was not derived from business of an interstate character.

I. That the petition of RCA Global Communications, Inc. is granted to the extent indicated in Conclusion of Law "B"; that the notices of deficiency issued June 16, 1975 asserting additional taxes under section 183 for the years 1970 and 1971, and the notices of deficiency issued June 16, 1975 asserting additional taxes under section 184 for the periods ended June 30, 1969, September 30, 1969, December 31, 1969, June 30, 1970 and March 30, 1971 through December 31, 1971 are hereby cancelled in full; and that the notices of deficiency asserting taxes due under section 183 for the year 1972 and under section 184 for the periods ended March 31, 1972 through September 30, 1972 are sustained.

DATED: Albany, New York

NOV 13 1981

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER